

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments make several changes to the conditions of Medicaid eligibility for persons residing in a medical institution and persons treated as though they were in a medical institution for purposes of eligibility.

The amendments in Items 1 and 2 eliminate the previous personal needs allowance provision for recipients of a pension paid by the U.S. Department of Veterans Affairs (VA) which has been reduced to \$90 per month because Medicaid is paying for the person’s care. That provision is replaced with an income exemption of \$90 which is applicable to reduced VA pensions and to VA pensions received by residents of the Iowa Veterans Home, whether reduced or not. This change reduces client participation for an estimated 150 residents of the Iowa Veterans Home. The change is made to comply with a policy clarification from the Centers for Medicare and Medicaid Services.

Item 2 allows an additional \$10 to a member’s personal needs allowance to pay for the administration fees of a medical assistance income or special needs trust. The amount may be higher than \$10 if approved by a court. Current rules provide that the Department determines eligibility according to SSI policy but do not specify how this policy is applied to trust expenses in determining a member’s client participation amount.

The amendments in Items 3 and 4 close a “loophole” in the penalty on transfer of assets at less than market value imposed under Section 1917(c) of the Social Security Act. When a person has transferred assets to qualify for Medicaid, the penalty is the imposition of a period of ineligibility proportionate to the amount of resources transferred. When that period has expired, the person may become eligible for Medicaid payment for long-term care expenses. If expenses that the person incurred for long-term care during the period of ineligibility are an allowable deduction from the person’s income in determining the person’s client participation obligation, Medicaid has effectively paid those expenses, thus nullifying a portion of the penalty.

Item 5 clarifies policy on when a penalty is not applied to transfer of assets. Although the current rules exempt the transfer of a home to an applicant’s blind or disabled child, Section 1917(c)(2) of the Social Security Act prohibits the application of a penalty for the transfer of any assets to a child who is blind or disabled.

The amendments in Items 6 and 7 correct the policy on when the purchase of an annuity shall be considered a transfer of assets for less than fair market value to conform to the requirements of Sections 1917(c)(1)(F) and (G) of the Social Security Act [42 U.S.C. §1396p(c)(1)(F)-(G)]. Item 8 clarifies policy on when purchase of a life estate is considered a transfer of assets for less than fair market value.

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8221B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 9, 2009.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

These amendments shall become effective on March 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.16, 75.23] is being omitted. These amendments are identical to those published under Notice as **ARC 8221B**, IAB 10/7/09.

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